

No. 10991

United States
Circuit Court of Appeals
For the Ninth Circuit.

GEORGE J. BUZAS,

Appellant,

vs.

PETER CASSENOS and JOSEPH P. MOORE,
Sheriff of the County of Napa, State of California,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Northern Division

FILED

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States
for the Northern District of California

In Bankruptcy—No. 9490

In the matter of

GEORGE J. BUZAS,

Bankrupt.

To the Honorable Judge of the District Court of
the United States for the Northern District of
California

DEBTOR'S PETITION

The Petition of George J. Buzas, residing at Route 1, Box 657a, in Vallejo, County of Solano, State of California, by occupation a Laborer on the United States Navy Yard at Mare Island, California for the last two months; prior thereto farmer.

Respectfully Represents:

1. Your petitioner has resided at the above address, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains

a full and true statement of all his debts, and as far as it is possible to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore Your Petitioner Prays, That he may be adjudged by the court to be a bankrupt within the purview of said Act.

BRANTLEY W. DOBBINS

HARLOW V. GREENWOOD

Attorneys for Petitioner

520 Marin Street, Vallejo,
Calif.

GEORGE J. BUZAS

Petitioner.

United States of America,
State of California,
County of Solano—ss.

I, George J. Buzas the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

GEORGE J. BUZAS

Petitioner

Subscribed and sworn to before me this 26th day of March, 1941.

BRANTLEY W. DOBBINS
Notary Public in and for the County of Solano,
State of California.

[Endorsed]: Filed April 4, 1941. [1*]

Schedule A.—STATEMENT OF ALL DEBTS OF
BANKRUPT

Schedule A-1

Statement of all Creditors to Whom Priority is Secured
by the Act

Claims which have priority.	Amount due or claimed
(a)	\$ Cts.
Wages due workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt, to an amount not exceeding \$600 each earned within three months before filing the petition	none
(b)	
Taxes due and owing to—	
(1) The United States	none
(2) The State of	none
(3) The county, district or municipality of..... State of	none
(c)	
(1) Debts owing to any person, including the United States, who by the laws of the United States is entitled to priority:	

Loan due Farm Credit Administration (Emergency Crop and Feed Loan) on 1937 crop; mortgage dated Aug. 31, 1937; mortgage recorded in Vol. 119, page 139, Napa County records; amount due \$270.85 with interest at 4% from August 31, 1937	270.85
---	--------

(2) Rent owing to a landlord who is entitled to priority by the laws of the State of California, accrued within three months before filing the petition, for actual use and occupancy: Refer to Schedule B-1; rent due October 1st, 1940, on lease in the sum of \$200.00 not paid; Note: rent due herein more than 3 months prior to filing said petition	200.00
--	--------

Total.....	\$470.85
------------	----------

GEORGE J. BUZAS, Petitioner.	[2]
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Schedule A-2

CREDITORS HOLDING SECURITIES

[N.B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by Act of Congress relating to bankruptcy, and whether contracted as partner or joint contractor with any other person, and if so, with whom.]

None

GEORGE J. BUZAS, Petitioner.	[3]
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Schedule A-3

CREDITORS WHOSE CLAIMS ARE UNSECURED

Napa Milling & Warehouse Co., Napa, Calif., for fertilizer	\$ 16.75
Petaluma Box Corporation, Petaluma, Calif., for lug boxes	11.00

Schedule A-3—(Continued)

Peter Freskan, Napa Road, Vallejo, Calif., Rural Deliver, for labor in 1938	27.00
John Coronado, Napa Road, Vallejo, Calif., Rural Deliver, for labor in 1938	75.00
Frank Collins, Napa Road, Vallejo, Calif., Rural Deliver, for rent property in 1938	185.00
Roy Mollison, 621 Porter Street, Vallejo, Calif., for excavating pit for water	200.00
H. Shwarz Co., 918 Main Street, Napa, Calif., for farming implements	45.41
U. S. Civil Service Training School, Seattle, Washington, for enrollment contract in correspondence course	50.00
Monarch Box and Lumber Co., Inc., 4901 Tidewater, Oakland, Calif., for lug boxes	145.00
Peter Cassenos, Napa Road, Vallejo, Calif., claim for damages; Note: Said Cassenos filed suit December 7, 1940, in the Superior Court of Napa County for said amount, but to date has not taken default or had judgment entered in said action	900.00
Baxter Knight, Vallejo, California for plowing and preparing ground for planting tomatoes	16.00
Bruno Getz, Napa, California, purchased from Getz gasoline motor on conditional sales contract for \$60.00; paid on account \$20.00, balance due on said contract	40.00
Curley Company, 219 Drumm Street, San Francisco, California, purchased on contract from said company 1000 lug boxes at a cost of \$50.00, paid on account \$32.00, balance due on said contract	18.00
Total.....	\$1,729.16

GEORGE J. BUZAS,
Petitioner.

[4]

Schedule A-4

LIABILITIES ON NOTES, OR BILLS DISCOUNTED
WHICH OUGHT TO BE PAID BY DRAWERS,
MAKERS, ACCEPTORS OR INDORSERS.

None

GEORGE J. BUZAS

[5]

Schedule A-5

ACCOMMODATION PAPER

[N.B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and indorsers thereof, are to be set forth under the names of the holders; if the debtor be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Give same particulars as to other commercial paper.]

None

GEORGE J. BUZAS

Petitioner.

OATH TO SCHEDULE A

United States of America,
State of California, County of Solano—ss.

I, George J. Buzas, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my debts, in accordance with the Act of Congress relating to Bankruptcy, according to the best of my knowledge, information, and belief.

GEORGE J. BUZAS,

Petitioner.

Subscribed and sworn to before me this 26th day of March, 1941.

[Seal]

BRANTLEY W. DOBBINS,

Notary Public in and for the County of Solano, State of California.

[6]

Schedule B.—STATEMENT OF ALL PROPERTY
OF BANKRUPT

Schedule B-1

REAL ESTATE

Location and Description of all real estate owned by debtor, or held by him, whether under deed, lease or contract.	Estimated Value of debtor's interest
---	--------------------------------------

Lease dated Sept. 10th, 1938, between Chas. E. Walsh and Geo. Buzas covering 50 acres in Napa County, California, hereinafter described; Said lease is for 5 years, terminating on Sept. 30th, 1941, at an annual cash rent of \$200.00 per annum, payable annually in advance; Said property covered by said lease is described as follows, to-wit:

All that certain, lot, piece or parcel of land situate near the southern boundary of the County of Napa, State of California, and bounded and particularly described as follows, to wit:

Commencing at a point of the Spring Road where a fence divides the land of Charles Walsh from the lands of Mini thence running westerly along the northerly line of the Mini land to the property of Leo Walsh, thence northerly along the east line of the land of Leo Walsh, to the land of the late Margaret Walsh, thence easterly along the south line of the land of the late Margaret Walsh to the Spring Road, thence southerly along the west side of the Spring Road to the point of commencement. Containing fifty (50) acres more or less.

NO VALUE

Total.....

GEORGE J. BUZAS,
Petitioner.

[7]

Schedule B-2

PERSONAL PROPERTY

	\$	cts.
A. Cash on hand	None	
B. Negotiable and non-negotiable instruments and securities of any description, including stocks in incorporated companies, interests in joint stock companies, and the like (each to be set out separately)	None	
C. Stock in trade in.....business of.....at.....of the value of	None	
D. Household goods and furniture, household stores, wearing apparel, and ornaments of the person	None	
E. Books, prints and pictures	None	
F. Horses, cows, sheep and other animals, (with number of each): None, except 1 dozen chickens....	7.50	
G. Automobiles and other vehicles: Registered owner 1935 Ford V-8 Pickup truck, 1940 License #5C677, Legal owner Mercantile Acceptance Corporation of California, 333 Montgomery Street, San Francisco, Calif., owes \$234.00 equity	95.00	
H. Farming stock and implements of husbandry:		
Old tractor, value	\$ 5.00	
Old disc	40.00	
		45.00
I. Shipping and shares in vessels	None	
J. Machinery, fixtures, apparatus and tools used in business, with the place where each is situated: Pump, valued \$12.00; 700 feet of 3" pipe casing \$75.00; 1000 feet of 4" irrigation pipe \$75.00; 2 old water tanks, one 8000 gallon, one 10000 gallon, \$45.00	207.00	
K. Patents, copyrights and trademarks	None	
L. Goods or personal property of any other description, with the place where each is situated:		
50 gallons of new wine, 3 months old.....	20.00	
Equity in gasoline motor belonging to Bruno Getz	20.00	
Equity in 1000 lug boxes of Curley Company....	32.00	
Total.....	\$ 426.50	

GEORGE J. BUZAS,
Petitioner.

Schedule B-3

CHOSSES IN ACTION

	\$	Cts.
A. Debts due petitioner on open account	None	
B. Policies of insurance	None	
C. Unliquidated claims of every nature with their estimated value	None	
Deposits of money in banking institutions and elsewhere	None	
Total.....		

GEORGE J. BUZAS,

Petitioner.

[9]

Schedule B-4

PROPERTY IN REVERSION, REMAINDER OR EXPECT-
ANCY, INCLUDING PROPERTY HELD IN TRUST
FOR THE DEBTOR OR SUBJECT TO ANY POWER
OR RIGHT TO DISPOSE OF OR TO CHARGE.

[N.B.—A particular description of each interest must be entered, with a statement of the location of the property, the names and description of the persons now enjoying the same, the value thereof, and from whom and in what manner debtor's interest in such property is or will be derived. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized as the proceeds thereof, and the disposal of the same, as far as known to the debtor.]

General Interest	Particular Description	Estimated Value of Interest
		\$ Cts.
Interest in land		None
Personal property		None
Property in money, stocks, shares, bonds, annuities, etc.		None
Rights and powers, legacies and bequests		None
Property heretofore conveyed for benefit of creditors		None

Amount Realized as Proceeds of Property Conveyed	
	\$ Cts.
Portion of debtor's property conveyed by deed of assign- ment or otherwise, for benefit of creditors; date of such deed, name and address of party to whom con- veyed; amount realized therefrom and disposal of same, as far as known to debtor	None
Attorney's fees: Attorney's fees paid Harlow V. Green- wood and Brantley W. Dobbins, Attorneys, 520 Marin Street, Vallejo, California, \$71.87 as follows: \$45.00 for Court costs and filing fees and \$26.87 on account of fees	71.87
Total.....	71.87

GEORGE J. BUZAS,
Petitioner.

[10]

Schedule B-5

PROPERTY CLAIMED AS EXEMPT FROM THE OPERA-
TION OF THE ACT OF CONGRESS RELATING TO
BANKRUPTCY.

[N.B.—Each item of property must be stated, with its valua-
tion, and, if any portion of it is real estate, its location, descrip-
tion and present use.]

Valuation	
	\$ Cts.
Property claimed to be exempt by the laws of the United States, with reference to the statute creat- ing the exemption	None
Total.....	

GEORGE J. BUZAS,
Petitioner.

[11]

Schedule B-6

BOOKS, PAPERS, DEEDS, AND WRITINGS RELATING
TO DEBTOR'S BUSINESS AND ESTATE

The following is a true list of all books, papers, deeds and writings relating to petitioner's trade, business, dealings, estate and effects, or any part thereof, which, at the date of this petition, are in petitioner's possession or under petitioner's custody and control, or which are in the possession or custody of any person in trust for petitioner, or for petitioner's use, benefit, or advantage; and also of all others which have been heretofore, at any time, in petitioner's possession, or under petitioner's custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books	None
Deeds	None
Papers	None

GEORGE J. BUZAS,
Petitioner.

OATH TO SCHEDULE B

United States of America,
State of California, County of Solano—ss.

I, George J. Buzas, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my property, real and personal, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

GEORGE J. BUZAS,
Petitioner.

Subscribed and sworn to before me this 26th day of March, 1941.

(Seal) BRANTLEY W. DOBBINS,
Notary Public in and for the County of Solano, State of California.

SUMMARY OF DEBTS AND ASSETS

[From the statements of the debtor in Schedules A and B.]

Schedule A—1-a	Wages	None
Schedule A—1-b (1)	Taxes due United States.....	None
Schedule A—1-b (2)	Taxes due States	None
Schedule A—1-b (3)	Taxes due counties, districts and municipalities	None
Schedule A—1-c (1)	Debts due any person, including the United States, having pri- ority by laws of the United States	270.85
Schedule A—1-c (2)	Rent having priority	200.00
Schedule A—2	Secured claims	None
Schedule A—3	Unsecured claims	1729.16
Schedule A—4	Notes and bills which ought to be paid by other parties thereto	None
Schedule A—5	Accommodation paper	None
Schedule A, Total.....		2200.01
Schedule B—1	Real Estate	None
Schedule B—2-a	Cash on Hand	None
Schedule B—2-b	Negotiable and non-negotiable instruments and securities.....	None
Schedule B—2-c	Stock in trade	None
Schedule B—2-d	Household goods	None
Schedule B—2-e	Books, prints and pictures.....	None
Schedule B—2-f	Horses, cows, and other animals	7.50
Schedule B—2-g	Automobiles and other vehicles	95.00
Schedule B—2-h	Farming stock and implements	45.00
Schedule B—2-i	Shipping and shares in vessels..	None
Schedule B—2-j	Machinery, fixtures, and tools....	207.00
Schedule B—2-k	Patents, copyrights, and trade- marks	None
Schedule B—2-l	Other personal property	72.00
Schedule B—3-a	Debts due on open accounts.....	None
Schedule B—3-b	Policies of insurance	None
Schedule B—3-c	Unliquidated claims	None
Schedule B—3-d	Deposits of money in banks and elsewhere	None

Summary of Debts and Assets—(Continued)

Schedule B—4	Property in reversion, remainder, expectancy or trust	None
Schedule B—5	Property claimed as exempt \$.....	
Schedule B—6	Books, deeds and papers	None
Schedule B, Total.....		\$ 426.50

GEORGE J. BUZAS,
Petitioner.

[13]

In the Northern Division of the United States Dis-
trict Court, Northern District of California

In Bankruptcy—No.....

In the Matter of

GEORGE J. BUZAS,

Bankrupt.

STATEMENT OF AFFAIRS

(For Bankrupt or Debtor not Engaged in Business)

(Note—Each question should be answered or the failure to answer explained. If the answer is “none”, this should be stated. If additional space is needed for the answer to any question, a separate sheet, properly identified and made a part hereof, should be used and attached.

The term “original petition” as used in the following questions, shall mean the petition filed under Section 3b or 4a of Chapter III, Section 322 of Chapter XI, Section 422 of Chapter XII, or Section 622 of Chapter XIII.)

1. Name and residence.

a. What is your full name? George J. Buzas.

b. Where do you now reside? Route 1, Box 657a, Vallejo, California.

c. Where else have you resided during the six years immediately preceding the filing of the original petition herein? Same place for fifteen years.

2. Occupation and income.

a. What is your occupation? Laborer for last two months; prior thereto farmer.

b. Where are you now employed? Mare Island Navy Yard.

(Give the name and address of your employer, or the address at which you carry on your trade or profession, and the length of time you have been so employed.) Working for U. S. Government since November 5th, 1940.

c. Have you been in partnership with anyone, or engaged in any business, during the six years immediately preceding the filing of the original petition herein? Never in partnership with anyone.

(If so, give particulars, including names, dates and places.) Prior to November 5th, 1940, was truck gardening, especially in raising tomatoes.

d. What amount of income have you received from your trade or profession during each of the two years immediately preceding the filing of the original petition herein? Since 1937 made no money in business and was on relief from March to October 1940.

e. What amount of income have you received

from other sources during each of these two years? None.

3. Income tax returns.

a. Where did you file your last federal and state income tax returns, and for what years? Never filed any. [14]

4. Bank accounts and safe deposit boxes.

a. What bank accounts have you maintained, alone or together with any other person, and in your own or any other name, within the two years immediately preceding the filing of the original petition herein? (Give the name and address of each bank, the name in which the deposit was maintained, and the name of every person authorized to make withdrawals from such account.) Have had no account since 1938.

b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities cash or other valuables, within the two years immediately preceding the filing of the original petition herein? None.

5. Books and records.

a. Have you kept books of account or records relating to your affairs within the two years immediately preceding the filing of the original petition herein? Never kept books of account.

b. In whose possession are these books or records? See Answer to 5-A above.

c. Have you destroyed any books of account or records relating to your affairs within the two years immediately preceding the filing of the original petition herein? No.

6. Property held in trust.

a. What property do you hold in trust for any other person? None.

7. Prior bankruptcy or other proceedings; assignments for benefit of creditors.

a. What proceedings under the Bankruptcy Act have been brought by or against you during the six years immediately preceding the filing of the original petition herein? None.

b. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver or trustee? No.

c. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within the two years immediately preceding the filing of the original petition herein? No.

8. Suits, executions and attachments.

a. Have you been party plaintiff or defendant in any suit within the year immediately preceding the filing of the original petition herein? Yes.

(If so, give the name and location of the court, the title and nature of the proceeding, and the result.)
Peter Cassenos as plaintiff vs. George Buzas, as defendant, Superior Court of Napa County, California, Case No. 8314; Case still pending [15]

b. Has any execution or attachment been levied against your property within the four months immediately preceding the filing of the original petition herein? Not that I know of.

9. Loans repaid.

a. What repayments of loans have you made dur-

ing the year immediately preceding the filing of the original petition herein? Made no loans during year and repaid none.

10. Transfer of property.

a. What property have you transferred or otherwise disposed of during the year immediately preceding the filing of the original petition herein? None.

(Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative the relationship, the consideration, if any, received therefor, and the disposition of such consideration.) Except sold water tank about six months ago for \$20.00.

11. Losses.

a. Have you suffered any losses from fire, theft or gambling during the year immediately preceding the filing of the original petition herein? None.

GEORGE J. BUZAS

.....

(Bankrupt or Debtor)

State of California

County of Solano—ss.

I, George J. Buzas the person who subscribed to the foregoing statement of affairs, do hereby make solemn oath that the answers therein contained are true and complete to the best of my knowledge, information, and belief.

GEORGE J. BUZAS

.....

(Bankrupt or Debtor)

Subscribed and sworn to before me this 26th day of March, 1941.

[Seal]

BRANTLEY W. DOBBINS

Notary Public in and for the County of Solano,
State of California. [16]

[Title of District Court and Cause.]

No. 9490—In Bankruptcy

ORDER OF ADJUDICATION AND
REFERENCE, ETC.

At Sacramento, in said District, on the 4th day of April, 1941.

The Petition of George J. Buzas filed on the 4th day of April, 1944, that George J. Buzas be adjudged a bankrupt under the Act of Congress relating to Bankruptcy, having been heard and duly considered; and no opposition being made thereto.

It Is Adjudged that the said George J. Buzas is a bankrupt under the Act of Congress relating to Bankruptcy.

It Is Ordered that the above-entitled proceeding be, and it hereby is referred to Shirley K. McMullin one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required and permitted by said Act, and that the said George J. Buzas shall henceforth attend before the said Referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

It Is Further Ordered that all notices required to be published in the above-entitled matter, and all orders which the Court may direct to be published, be inserted in Vallejo "Chronicle", a newspaper published in the County of Solano, State of California, within the territorial district of this Court, and in the County within which said bankrupt resides.

Dated April 4, 1941.

MARTIN I. WELSH

District Judge.

[Endorsed]: Filed Apr. 4, 1941. [17]

[Title of District Court and Cause.]

DISCHARGE OF BANKRUPT

At Santa Rosa, in said district, on the 18th day of November, 1941.

It appearing that George J. Buzas, of Vallejo in the County of Solano, State of California, was duly adjudged a bankrupt on a petition filed by him on the 4th day of April, 1941; and

It further appearing that, after due notice by mail, no objection to the discharge of said bankrupt was filed within the time fixed by the court;

It is ordered that the said George J. Buzas be, and he hereby is, discharged from all debts and claims which are made provable by said Act against his estate, except such debts as are, by said Act, excepted from the operation of a discharge in bankruptcy.

Made and Filed November 18, 1941.

SHIRLEY K. McMULLIN

Referee in Bankruptcy.

[Endorsed]: Filed Nov. 26, 1941. [18]

[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE
WHY LEGAL PROCEEDINGS SHOULD
NOT BE STAYED, FOR TEMPORARY RE-
STRAINING ORDER TO BE MADE PER-
MANENT AFTER HEARING, AND FOR
TURNOVER ORDER

To the Honorable Martin I. Welsh, Judge of the
United States District Court for the Northern
District of California, Northern Division:

Now comes, George J. Buzas, the bankrupt above
named and respectfully represents to this Honorable
Court:

That on April 4, 1941, your petitioner, filed his
voluntary petition in bankruptcy under and pursu-
ant to the provisions of the Bankruptcy Act and
on said April 4, 1941, your petitioner was duly and
regularly adjudged a bankrupt and reference of the
above entitled proceedings was duly and regularly
made to Honorable Shirley K. McMullen, Referee
in Bank- [19] ruptcy at Santa Rosa, California, in
said District;

That your petitioner filed in the above entitled
proceedings his true schedules of all of his assets

and liabilities as far as the same were known to him. In his schedules, and more particularly in his Schedule A-3 "Creditors Whose Claims Are Unsecured", your petitioner named and described in the manner following, an unsecured creditor, viz:

"Peter Cassenos, Napa Road, Vallejo, Calif., Claim for damages, Note: Said Peter Cassenos filed suit December 7, 1940, in the Superior Court of Napa County for said amount, but to date has not taken default or had judgment entered in said action"..... \$900.00

That said Superior Court action is one for treble damages based upon an alleged forcible and unlawful entry by petitioner upon real property, which by an agreement in writing, was leased to said creditor by petitioner on or about December 18, 1939, at the approximate annual rental of \$70.00, the term of which was to end approximately October 15 to November 15, 1940; that petitioner believing in good faith that said term had ended, took over said real property on November 16, 1940, by right of re-entry, all in accordance with and pursuant to the terms and provisions of said agreement in writing, as aforesaid; that the damages allegedly claimed by said creditor is alleged to be treble damages in the sum of \$900.00; that petitioner's entry upon said real property, was not, in and of itself, wrongful, nor intentionally done in willful or any disregard of petitioner's duty in the premises, but in accordance with the aforesaid right of re-entry.

That in the due administration of the above entitled proceedings, Notice of the First Meeting of Creditors, in these proceedings, was duly and regularly given to all the creditors named in petitioner's said Schedules; that said [20] notice was duly and regularly given as required by law to said creditor, Peter Cassenos, at his address, described as aforesaid;

That on November 18, 1941 by an order duly and regularly made by said Honorable Shirley K. McMullen, Referee in Bankruptcy, your petitioner was duly and regularly discharged from his debts provable, allowable and dischargable against him in the above entitled proceedings including the debt allegedly owing to said creditor, Peter Cassenos, listed in your petitioner's schedules and described as aforesaid;

That the alleged claim asserted by said creditor and hereinabove described, arose out of that certain civil action on or about December 7, 1940, or thereabouts in the Superior Court of the State of California, in and for the County of Napa, and being action No. 8374 of the Records of the Clerk of said Court, entitled Peter Cassenos, Plaintiff v. George Buzas, Defendant; that thereafter on or about March 8, 1941, said creditor cause the default of your petitioner to be entered in said action and upon said default a judgment was entered therein for the sum of \$900.00 and costs of \$9.75; that thereafter on September 8, 1942, and subsequent to the commencement of the above entitled bankruptcy proceedings, said creditor caused an execution to be

levied by the Sheriff of Napa County, John P. Steckter, upon the property of your petitioner, namely, a certain tomato crop, the sale of which took place on October 1, 1942, and said Sheriff took into his possession the proceeds of said sale, namely, the sum of \$150.00; that theretofore on September 30, 1942, your petitioner obtained an order from said Superior Court staying the proceedings in said action and impounding said sum of \$150.00 in the hands of the then said Sheriff; thereafter on or about February 10, 1943, the said Superior Court duly and regularly made its order vacating said judgment as aforesaid; that sub- [21] sequent thereto and on April 22, 1943, said creditor caused a later judgment to be entered in said action, and execution to issue thereon, April 22, 1943, pursuant to which and not until September 21, 1943, said Sheriff sold a certain quantity of wheat for the sum of \$330.20 and a tractor to said creditor for the sum of \$600.00, all of which property was acquired by petitioner subsequent to the commencement of the aforesaid bankruptcy proceedings, that the sum total of the proceeds recovered by said Sheriff is \$1,080.20; that your petitioner is informed and believes and upon said information and belief alleges the facts to be that said Sheriff, John P. Steckter, has never filed with the Clerk of said Superior Court his return upon said executions or either of them, and that in his capacity as Sheriff, he has retained a portion of said proceeds described as aforesaid, namely, the approximate sum of \$300.00 thereof, and that said approximate sum of \$300.00

has been, and now is, in the possession of said Sheriff's successor, Joseph E. Moore, the present Sheriff of Napa County, State of California;

That the proceedings in said Superior Court action and the successive writs of execution therein against the property of your petitioner, with full knowledge of the commencement, pendency and subsequent conclusion of the above entitled bankruptcy proceedings, were instituted by said creditor against your petitioner in violation of the authority of this Honorable Court and the said Order of Discharge; that said creditor's claim is a provable and dischargeable claim in the above entitled proceedings, and in view of the aforesaid allegations by your petitioner revealing the unusual circumstances attendant upon the levies of said writs of execution, an alleged claim for \$900.00 treble damages arising out of a tenancy for an annual rental of \$70.00, the [22] retention by said Sheriff and his successor of the proceeds acquired thereunder, and the failure to file the returns of said writs of execution, and as petitioner is informed and believes and upon said information and belief alleges the facts to be that said creditor will continue with the litigation in said Superior Court and will levy additional writs of execution, the operation of your petitioner's discharge and the Order thereof will be ineffective to properly protect him with the remedies provided for under the provision of the Bankruptcy Act, and your petitioner will be compelled to pursue a lengthy and expensive course of litigation and be put to great expense in obtaining the return to him of said

sum of approximately \$300.00 now in the hands of the present Sheriff of Napa County, namely, Joseph E. Moore, and the additional sums totaling the approximate sum of \$780.20, unlawfully recovered by said creditor as aforesaid;

Wherefor, your petitioner prays:

1. For an order directing and ordering said creditor, Peter Cassenos, and said Sheriff of Napa County, Joseph P. Moore, and each of them, to appear before the above entitled Court on a day and on a time certain to then and there show cause, if any they or either of them have, why said creditor, his agents, servants, assigns, employees and attorneys should not be forever enjoined and restrained from proceeding with any legal process to collect said judgment and from taking any proceedings, legal or otherwise, in connection therewith, and why such creditor should not turn over to your petitioner said sum of \$780.20, and why said Sheriff, Joseph P. Moore, should not be permanently restrained from paying over said approximate sum of \$300.00 to said creditor, and why he should not turn over said sum to your petitioner, and for such other and further relief as may be meet and proper in [23] the premises for which no previous application has been made, including costs and expenses, if any, for these proceedings;

2. For an order, temporarily enjoining and restraining said Sheriff, Joseph P. Moore, from turning over said approximate sum of \$300.00 to said creditor, and temporarily enjoining and restraining said creditor from proceeding with the enforce-

ment of said judgment until after the hearing of this petition and Order to Show Cause thereon, and the final determination thereof.

GEORGE J. BUZAS

Petitioner

MAX H. MARGOLIS

BRANTLEY W. DOBBINS

Attorneys for Petitioner [24]

United States of America,
Northern District of California,
County of Solano—ss.

George J. Buzas, being first duly sworn, deposes and says:

That he is the petitioner named and described in the foregoing petition; that he has read the petition and knows the contents thereof and hereby makes solemn oath that the statements contained therein are true to the best of his knowledge, information and belief.

GEORGE J. BUZAS

Subscribed and sworn to before me this 31st day of December, 1943.

BRANTLEY W. DOBBINS

Notary Public in and for the county of Solana,
State of California.

[Endorsed]: Filed Feb. 15, 1944. [25]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE AND TEMPORARY
RESTRAINING ORDER

Upon the reading, filing and consideration of the verified petition of George J. Buzas, the bankrupt above named, it therein appearing to be a proper case for the Orders following, and it further appearing that the bankrupt has duly and regularly obtained a discharge in the above entitled proceedings, and upon the consideration of all the records and papers of the file in said proceedings:

It Is Hereby Ordered that Peter Cassenos, Napa Road, Vallejo, California, in said District, the creditor named in said verified petition, do personally appear before the undersigned United States District Court Judge, at his Court- [26] room located in the United States Post Office and Courthouse Building, at Sacramento, California on Monday, the 20th day of March, 1944, at the hour of 10:30 o'clock A.M., of said day, or as soon thereafter as counsel may be heard, to then and there show cause, if any you have, why you the said Peter Cassenos, your agents, servants, assigns, employees and attorneys or either or any of them should not be forever restrained and enjoined from taking any proceedings, legal or otherwise for the purpose of collecting or enforcing the collection of any moneys allegedly due or claimed to be due from the Bankrupt herein on account of any claim or claims asserted by you against said Bankrupt, dischargeable in the above entitled proceedings; and why you

should not be ordered to turnover to said Bankrupt the sum of \$780.20 recovered by you upon a claim duly scheduled in Bankrupt's Schedules on file herein, after the commencement, pendency and conclusion of the above entitled Bankruptcy proceedings; and pending the hearing of said petition and the Order to Show Cause thereon, you, your agents, servants, assigns, employees and attorneys and each of them are enjoined and restrained from taking any proceedings, legal or otherwise, upon any of the matters set forth in said petition, until the final determination thereof and the further order of this Court; and

It Is Further Ordered, that Joseph P. Moore, Sheriff of the County of Napa, State of California, in said District, do personally appear before the undersigned, United States District Court Judge, at the place, on the day and at the time as hereinabove set forth, or as soon thereafter as counsel may be heard, to then and there show cause, if any you have, why the sum of \$300.00 or thereabouts, which as in said verified petition it is alleged you now have in your hands, should not be turned over to the petitioner herein; and you are further [27] ordered and directed to bring with you at the aforesaid time and place any and all books, records and documents which will show the levy of any writ or writs of execution in that certain action entitled "Peter Cassenos, Plaintiff v. George Buzas, Defendant" being No. 8341 of the files of the Clerk of the Clerk of the Superior Court of the State of California, in and for the County of Napa, show-

ing what disposition was made of any and all moneys received pursuant to the levy of said writ or writs of execution, the disposition of the same and what amount, if any, is now on hand; and

It Is Further Ordered that a copy of Bankrupt's said verified petition, together with a certified copy of this Order to Show Cause be served personally upon said creditor Peter Cassenos, and upon said Sheriff of Napa County, by delivering the same to them not later than ten (10) days prior to the aforesaid date of the hearing of the same.

Dated: Sacramento, California, in said district; February 15th, 1944.

MARTIN I. WELSH

United States District Judge

[Endorsed]: Filed Feb. 15, 1944. [28]

BANKRUPT'S EXHIBIT No. 1

In the Superior Court of the State of California,
in and for the County of Napa

No. 8374

PETER CASSENOS,

Plaintiff,

vs.

GEORGE BUZAS,

Defendant.

COMPLAINT

Plaintiff complains of defendant and for cause of action alleges:

That on November 16, 1940, and for a long time prior thereto plaintiff was entitled to the possession of and was in the actual possession of that certain real property situate in Napa Township, county of Napa, state of California, described as follows, to-wit:

Commencing at a point of the Spring Road where a fence divides the land of Charles Walsh from the land of Mini, thence running westerly along the northerly line of the Mini land at distance of approximately three hundred and sixty feet (360); thence northerly parallel to the Spring Road a distance of approximately thirteen hundred and sixty feet (1360) to the land of Margaret Walsh; thence easterly a distance of three hundred and sixty feet approximately (360) along the south line of the land of the late Margaret Walsh to the Spring Road; thence southerly along the west side of the Spring Road to the point of commencement. Containing twelve (12) acres, more or less.[29]

II.

That said lands and premises were on said 16th day of November, 1940, under cultivation and were planted by plaintiff to a crop of tomatoes which tomato crop was then and there growing upon said premises.

III.

That on said 16th day of November, 1940, the defendant forcibly and unlawfully entered in and upon said cultivated real property and drove a

truck over the growing vines and crop of tomatoes injuring and damaging the same in the sum of \$300.00.

IV.

That as a consequence of said forcible and unlawful entry and trespass of the defendant, plaintiff has been damaged in the sum of \$300.00, and is entitled to treble damages as a result thereof.

Wherefore plaintiff prays judgment against defendant for the sum of \$900.00 and costs of suit.

KING & KING

Attorneys for plaintiff. [30]

State of California,
County of Napa—ss.

Peter Cassenos, being first duly sworn, deposes and says:

That he is the plaintiff named in the foregoing complaint; that he has read said complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated on his information or belief and as to those matters that he believes it to be true.

PETER CASSENOS

Subscribed and sworn to before me this 6th day of December, 1940.

[Seal] PERCY KING, JR.

Notary Public in and for the County of Napa,
State of California.

[Endorsed]: Filed Dec. 9, 1940. [31]

BANKRUPT'S EXHIBIT No. 2

In the Superior Court of the State of California
in and for the County of Napa

No. 8374

PETER CASSENOS,

Plaintiff,

vs.

GEORGE BUZAS,

Defendant.

EXECUTION

The People of the State of California

To the Sheriff of the County of Napa,

Greeting:

Whereas, on the 8th day of March, 1941, Peter Cassenos, Plaintiff, recovered a judgment in the said Superior Court of the County of Napa, State of California, against George Buzas, Defendant, for the sum of Nine hundred Dollars (\$900.00) with interest from March 8, 1941 at the rate of seven per cent per annum until paid, together with \$9.75 costs and disbursements at the date of said judgment, amounting to the sum of \$909.75 Dollars, and accruing costs as appears to us of record.

And Whereas, the Judgment roll in the action in which said Judgment was entered, is filed in the Clerk's office of said Court, in the County of Napa, and the said Judgment was docketed in said Clerk's office in said County on the day and year first above written.

And the sum of Nine hundred nine and 75/100

Dollars (\$909.75) with interest thereon, together with costs in the sum of.....and accrued costs in the sum of....., aggregating the sum of..... is now (at the date of this writ) actually due on this Judgment.

Now You, the Said Sheriff, are hereby required to make the said sums due on the said Judgment for damages, with interest as aforesaid and costs and accruing costs, to satisfy the said Judgment of Nine Hundred and nine and 75/100 Dollars out of the personal property of said Debtor George Buzas or, if sufficient personal property of said debtor cannot be found, then out of the real property in your county belonging to George Buzas on the day whereon said Judgment was docketed in the said County, or and any time thereafter; and make return of this writ within 30 days after your receipt hereof, with what you have done endorsed thereon.

[32]

BANKRUPT'S EXHIBIT No. 3

Re: Peter Cassenos vs. George Buzas

INSTRUCTIONS TO SHERIFF

You are hereby instructed to levy on, seize and sell all of the following property of George Buzas located on the Charles Walsh farm on the Spring Road toward American Canyon about 7½ miles South of the City of Napa in Napa County, California, including crop of wheat, oats, tomatoes and one tractor.

Dated: September 8, 1942.

KING & KING

By PERCY KING, JR.

Attorneys for Plaintiff. [33]

BANKRUPT'S EXHIBIT No. 4

In the Superior Court of the State of California
in and for the County of Napa

No. 8374

PETER CASSENOS,

Plaintiff,

vs.

GEORGE BUZAS,

Defendant.

EXECUTION

The People of the State of California

To the Sheriff of the County of Napa,
Greeting:

Whereas, on the 22nd day of April, 1943, Peter Cassenos, Plaintiff, recovered a judgment in the said Superior Court of the County of Napa, State of California, against George Buzas, Defendant for the sum of Nine Hundred Dollars (\$900.00) with interest at the rate of 7 per cent per annum until paid, together with \$9.75 costs and disbursements at the date of said judgment, amounting to the sum of \$909.75 Dollars, and accruing costs as appears to us of record.

And Whereas, the Judgment roll in the action in which said Judgment was entered, is filed in the Clerk's office of said Court, in the County of Napa, and the said Judgment was docketed in said Clerk's office in said County on the day and year first above written.

And the sum of Nine hundred Dollars with interest thereon, together with costs in the sum of \$9.75, and accrued costs in the sum of....., aggregating the sum of.....is now (at the date of this writ) actually do on this Judgment.

Now You, the Said Sheriff, are hereby required to make the said sums due on the said Judgment for damages, with interest as aforesaid, and costs and accruing costs, to satisfy the said Judgment of Nine hundred nine and 75/100 Dollars out of the personal property of said debtor or, if sufficient personal property of said debtor cannot be found, then out of the real property in your county belonging to George Buzas on the day whereon said Judgment was docketed in the said County, or at any time thereafter; and make return of this writ within 60 days after your receipt hereof, with what you have done endorsed thereon. [34]

BANKRUPT'S EXHIBIT No. 5

Napa County Sheriff: Please sell according to the following notice.

PERCY KING, JR.

Attorney for Plaintiff

Sold 9-21-43, 10 A.M.—to Peter Cassenos for \$600.00.

In the Superior Court of the State of California,
in and for the County of Napa

No. 8374

PETER CASSENOS,

Plaintiff,

vs.

GEORGE BUZAS,

Defendant.

NOTICE OF SHERIFF'S SALE OF PERSONAL PROPERTY ON EXECUTION

Under and by virtue of an execution and order of sale issued out of the Superior Court of the County of Napa, state of California, and to me directed and delivered for a judgment rendered in said Court on the 22nd day of April, 1943, for the sum of \$900.00 in lawful money of the United States, together with the costs of suit and interest in favor of Peter Cassenos and against George Buzas, I have levied on all the right, title, claim and interest of said defendant of in and to the following property, to-wit:

Top Seat, Standard Model 30 Caterpillar Tractor Serial No. S-3769, and

127 sacks of wheat of net weight of approximately 16,530 lbs. [35]

Notice is Hereby Given, that I will sell all of the right, title and interest of said defendant, George Buzas, in and to the above described property or so much thereof as may be necessary to satisfy plaintiff's claim besides all costs, interest and accruing costs at public auction for cash in hand to the highest and best bidder, the sale of the above described tractor to take place at the warehouse of Berglund Tractor and Equipment Company at the northeast corner of First and McKinstry Streets, and on Tuesday the 21st day of September, 1943, at the hour of 10 o'clock A.M. of said day, and the sale of said wheat to take place at the warehouse of Napa Milling and Warehouse Company at Main and Fifth Streets, Napa, California, on Tuesday the 21st day of September, 1943, at the hour of 11 o'clock A.M. of said day, each of which sales are to be held in the city of Napa, County of Napa, state of California.

Dated, at Napa, California, this 13th day of September, 1943.

JOHN P. STECKTER,
Sheriff

By JOHN CLAUSSEN, JR.
Under Sheriff [36]

BANKRUPT'S EXHIBIT No. 6

R. E. Keig
Napa, California

September 21, 1943

M Sheriff of Napa County

To Napa Milling & Warehouse Co., Dr.

Main and Fifth Streets

Telephones 198 and 199

Wheat 12700# @2.60\$330.20

[37]

BANKRUPT'S EXHIBIT No. 7

In the Superior Court of the State of California
in and for the County of Napa

No. 8374

PETER CASSENOS,

Plaintiff,

vs.

GEORGE BUZAS,

Defendants.

SHERIFF'S CERTIFICATE OF SALE
ON EXECUTION

State of California,

County of Napa—ss.

I, John P. Steckter, Sheriff of the county of
Napa, state of California, do hereby certify that
under and by virtue of a writ of execution issued

out of the Superior Court of the state of California, in and for the county of Napa, in that certain action No. 8374 wherein Peter Cassenos, is plaintiff, and George Buzas, is defendant, upon a judgment dated the 8th day of March, 1941, did on this 1st day of October 1942, sell all of the crop of tomatoes now standing and growing on the Charles Walsh farm on the Spring Road toward American Canyon about 7½ miles south of the city of Napa, in the county of Napa, state of California, after due and legal notice at auction at the hour of 10 o'clock A.M. of this day, [38] at said premises within view of those who attended the sale to Peter Cassenos for the sum of \$150.00 cash in lawful money of the United States; that said sum of \$150.00 was the price bid for said personal property, was the whole price paid therefor, and was the highest and best bid for the same.

Given under my hand this 1st day of October, 1942.

.....

Sheriff of Napa County

By

Under-Sheriff

No.....

Oct. 1, 1942.

Received of Napa County Sheriff One hundred fifty & No/100 Dollars. Cassenos vs. Buzas, proceeds of sale of tomatoes.

\$150.00

PETER CASSENOS
By PERCY KING, JR.
His Attorney [39]

BANKRUPT'S EXHIBIT No. 8

In the Superior Court of the State of California,
in and for the County of Napa

No. 8374

PETER CASSENOS,

Plaintiff,

vs.

GEORGE BUZAS,

Defendants.

SHERIFF'S CERTIFICATE OF SALE
ON EXECUTION

State of California,
County of Napa—ss.

I, John P. Steckter, Sheriff of the county of Napa, state of California, do hereby certify that under and by virtue of a writ of execution issued out of the Superior Court of the state of California, in and for the county of Napa, in that certain action No. 8374 wherein Peter Cassenos is

plaintiff, and George Buzas, is defendant, upon a judgment dated the 22nd day of April, 1943, did on this 21st day of September, 1943, sell one top seat Model 30 Best Caterpillar Tractor Serial No. S-3769 after due and legal notice at auction at the hour of 10 o'clock A.M. of this day, at the warehouse of Berglund Tractor and Equipment Company, Napa, California, within view of those who attended the sale, to [40] Peter Cassenos for the sum of \$600.00 cash in lawful money of the United States; that said sum of \$600.00 was the price bid for said personal property, was the whole price paid therefore, and was the highest and best bid for the same.

Given under my hand this 21st day of September, 1943.

JOHN P. STECKTER

Sheriff of Napa County

By JOHN CLAUSSEN, JR.

Under-Sheriff

No.....

Sept. 21, 1943.

Received of Napa County Sheriff Six hundred and no/100 Dollars. Cassenos vs. Buzas, proceeds of sale of tractor.

\$600.00

PETER CASSENOS

By PERCY KING, JR.,

His Attorney [41]

BANKRUPT'S EXHIBIT No. 9

DISBURSEMENTS AND SHERIFF'S COSTS

Debits

Sept. 24, 1942	Serving Execution on George Buzas.....	\$ 1.00
Sept. 24, 1942	Posting 3 notice of Sheriff's Sale.....	3.00
	Mileage on above: 12 miles @ .25.....	3.00
Oct. 1, 1942	Conducting Sheriff's Sale	1.00
	Mileage on above: 10 miles @ .25.....	2.50
	Hauling wheat and Tractor including stor- age on tractor up to and including Dec. 31, 1942	71.00
		<hr/> \$81.50

Credits

April 28, 1943	By check from Percy King, Jr.	\$81.50
		<hr/> \$81.50

Sept. 28, 1943	Storage on Tractor from Jan. 1 to Sept. 28, 1944, @ \$5.00 per month	45.00
Sept. 21, 1943	Sheriff's Costs—Posting Notices of Sale....	3.00
	Conducting sales	1.00
	Mileage: 5 @ .25	1.25
	Commissions 1%	10.80
		<hr/> \$61.05

Money Received by virtue of Writ of Execution:

Oct. 1, 1942—		
	Sale of Tomato crop	\$ 150.00
Sept. 21, 1943—		
	Sale of Tractor	600.00
Sept. 21, 1943—		
	Sale of Grain	330.20
		<hr/> \$1080.20

Money Disbursed:

Oct. 1, 1942—		
	Paid to Percy King	150.00 (on Tomato Sale)
Sept. 21, 1943—		
	Paid to Percy King	600.00 (on Tractor Sale)

Sept. 28, 1943—

Paid to Berglund Tractor & Eqpt.

Co. (Storage) 45.00

Sept. 21, 1943—

Sheriff's Fees 16.05 (See above)

Balance on hand 269.15

\$1080.20

[42]

EXHIBIT "A"

In the Superior Court of the State of California,
in and for the County of Napa

No. 8374

PETER CASSENOS,

Plaintiff,

vs.

GEORGE BUZAS,

Defendant.

JUDGMENT

The above entitled action this day came on for trial before the Court without a jury, a jury having been expressly waived, the plaintiff appearing in person, and through his attorneys; no appearance was made by or on behalf of the defendant, proof was made to the satisfaction of the Court that the defendant was served personally with the summons herein, that he has failed to appear in this action within the time allowed by law and that the default of said defendant has been duly and regularly entered herein; oral and documentary

evidence was introduced, the cause was submitted to the Court for its decision and the Court now finds:

That all of the allegations of the complaint are sustained by the evidence and are true; that on November 16th, 1940, the defendant forcibly and unlawfully entered in and upon real property in the County of Napa cultivated by plaintiff [43] and drove a truck over the growing vines and crop of tomatoes of the plaintiff, damaging the same in the sum of \$300.00; that said defendant on said day did wilfully and maliciously injure the said property of the plaintiff and the plaintiff is entitled to treble damages as a result thereof.

It Is Therefore Ordered, Adjudged and Decreed, that plaintiff have and recover judgment against the defendant in the sum of \$900.00 for defendant's wilful and malicious injury to the property of plaintiff, plaintiff shall recover his costs of \$9.75.

Done in open Court this 22nd day of April, 1943.

MERVIN C. LERNHART

Judge of the Superior Court

The foregoing instrument is a correct copy of the original on file in this office.

Attest: April 5, 1944.

R. A. DOLLARHIDE

County Clerk and Clerk of the Superior Court and
for the County of Napa, State of California.

By D. D. DALY

Deputy

[Endorsed]: Filed April 22, 1943. [44]

In the Northern Division of the U. S. District Court
for the Northern District of California

Before Honorable Martin I. Welch.

No. 9490

In the Matter of

GEORGE J. BUZAS,

Bankrupt.

IN BANKRUPTCY

Hearing on return of Order to Show Cause why
legal proceedings should not be stayed, for tem-
porary restraining order to be made permanent
after hearing and for turnover order.

Appearances:

Max H. Margolis, Esq.,
Brantley W. Dobbins, Esq.,
For Bankrupt.

Percy King, Jr.
For Respondent. [45]

Thursday, April 6, 1944

JOHN CLAUSSEN, JR.

called as a witness on behalf of bankrupt, being first
duly sworn, testified as follows:

Mr. Margolis: Q. Mr. Claussen, what is your
business or occupation?

A. At the present time I am under sheriff of
Napa County.

(Testimony of John Claussen, Jr.)

Q. And what was your connection with the Sheriff's office in the years 1940 and '41?

A. Under sheriff.

Q. Did you bring any books or papers or documents in connection with any executions handled by the Sheriff of Napa County in the matter of Cassenos versus Buzas?

A. Yes, I did.

Q. May I see them, please? Can you, if you know inform me the first execution issued? You are more familiar with those, Mr. Claussen, than I am.

A. I believe that is the complaint (presenting document).

Q. Is this the original, or a copy?

A. The original, sir.

Q. That was issued by the Superior Court of Napa County on September 8, 1942?

A. Yes, sir.

Q. Was it returned partially satisfied or wholly unsatisfied, or what, Mr. Claussen?

A. It has not been returned.

Q. It was never returned, is that correct?

A. No, sir, they declared this execution to be void.

Q. Who declared it to be void, Mr. Claussen?

A. I believe it was the judge of the Superior Court, Harold Jacoby.

Q. And that was never returned to the Clerk's office?

A. That is right.

Q. Was there an execution levied?

A. Yes, sir.

(Testimony of John Claussen, Jr.)

Q. Have you that execution?

A. Yes, sir. [47]

Q. May I see it, please, and I will also have the first one, please.

A. Yes, sir (present documents).

Q. This was issued out of the Superior Court by the Clerk on April 2, 1943?

A. Yes, sir, the last one. The first execution was issued on September 8, 1942.

Q. Now, have you a copy or the original instructions which went with both of these executions? A. Yes, sir.

Q. May I have them, please?

A. That is the first one, and here is the instruction on the second one (presenting documents).

Q. What happened to the proceeds of the sale under these executions, Mr. Claussen?

A. Well, I have an accounting here. Do you want me to state the amounts of money received?

Q. That is correct, and what disposition was made of them.

A. On October 1, 1942, the crop of tomatoes was sold for \$150.00. That was sold to Mr. Cassenos—pardon me, to Mr. King, Percy King, Jr.

Q. The crop was sold to Mr. King?

A. At public auction, yes.

Q. He bought them in for \$150.00?

A. Yes, sir.

Q. On October 1, 1942, did you say?

A. Yes, sir. On September 21, 1943, the tractor was sold for \$600.00.

(Testimony of John Claussen, Jr.)

Q. To whom?

A. To Mr. Peter Cassenos, that is the plaintiff, he was the highest bidder.

Q. Were there any other bids received?

A. Yes, sir.

Q. Do you have them there?

A. No, they were sold at public auction.

Q. Who conducted the sale? A. I did.

Q. Do you know what the next highest bid to \$600.00 was? [48]

A. I think the other highest was \$550.00 by a gentleman who is in the contracting business in Napa.

Q. Was there anything else, any other property sold?

A. Yes, sir, there was some grain sold for \$330.20.

Q. When did that sale take place?

A. On September 21, 1943.

Q. What was the date of the issuance on this second writ? A. April 22, 1943.

Q. And the sale was pursuant to that writ and did not take place until September 21, 1943?

A. That is correct.

Q. And that writ was never filed, never been returned to the clerk's office? A. It has not.

Q. Now, what disposition was made of the \$330.20?

A. I had to pay \$61.05 costs. There was storage due on the tractor from January 1 until September 28, 1943, at the rate of \$5.00 a month, which

(Testimony of John Claussen, Jr.)

would be \$45.00, and then our costs and commissions were \$16.05, including the posting of the notices of Sheriff's sale and conducting sale, and mileage.

Q. Yes?

A. And there was \$61.05 came out of that \$330.20, leaving a balance of \$269.15, which we still have in our possession.

Q. \$269.15? A. That is correct.

Q. You had that in your possession since September '43?

A. September 21, 1943, yes sir.

Q. Is there any reason why—I will withdraw that.

Can you tell us why you are holding that \$269.15, Mr. Claussen?

A. Yes, I was holding it at Mr. King's instructions.

Q. And that is the only reason?

A. That is the only reason, yes, sir.

Q. There are no other expenses due to your office out of that [49] \$269.15?

A. No, sir, that is all the money we have on hand. There were other costs involved in September of 1942 when we served the execution and attached the tractor.

Q. Did you receive \$150.00 for the sale of that wheat?

A. Yes, I did—Oh, for the sale of the tomatoes, you mean?

Q. The sale of the tomatoes, pardon me.

A. Yes, sir.

(Testimony of John Claussen, Jr.)

Q. Do you have the card or any other information that would show that and what disposition was made of the \$150.00?

A. I turned that over to Mr. King.

Q. Mr. King? A. Yes, sir.

Q. Does he have them with him now, do you know?

A. Just a minute, I have the record here, the receipt and everything. (Documents presented to counsel.)

Q. Do I understand, then, Mr. Claussen, that Mr. King purchased these tomatoes from the Sheriff for \$150.00 and paid the Sheriff \$150.00 and in turn the Sheriff turned over the entire \$150.00——

A. To Mr. King.

Q. ——to Mr. King for judgment of creditors?

A. That is right.

Q. Were there any expenses due to the Sheriff's office for the sale at that time?

A. Yes, sir. Let's see, what is the date of that, sir?

Q. October 1, 1942.

A. Yes, we had the serving of the execution and posting three notices of the Sheriff's sale, and mileage, at that time.

Q. And that wasn't withdrawn from the \$150.00?

A. No, sir, because the case was not complete.

Q. But notwithstanding, you turned the \$150.00 over to Mr. King? A. Yes, sir.

Q. Does Mr. King run an open account with the Sheriff's office [50] of Napa County?

(Testimony of John Claussen, Jr.)

A. An open account— oh yes, we don't ask advances of funds from any local lawyers.

Q. I see. Any matter that comes from his office, you just handle it without advance of funds?

A. Yes, sir, that is right.

Q. Do you have any funds coming out of the \$269.15, Mr. Claussen?

A. No, sir. You see, sir, on September 24 there was a one dollar charge for serving the execution on Mr. Buzas.

Q. Of what year?

A. 1942. And there was a posting of three notices of Sheriff's sale, which amounted to \$3.00 and the mileage was \$3.00, there was twelve miles at 25 cents per mile. Then there was on October 1, conducting the sale, \$1.00 and mileage, ten miles at 25 cents a mile, \$2.50. Then the tractor and wheat were hauled and stored at the Napa Milling Company in Napa, and I don't know exactly what there were on that, but up to September 30, 1943, their storage and hauling charges were \$71.00, and on April 28, 1943, Mr. King paid \$81.50 covering all the expenditures that I have just itemized to you.

Q. That was separate and apart from the \$269.15?

A. That is right, that was in 1942, and there was no further action taken until September 28, 1943, and then the other expenditures for nine months' storage on the tractor, plus the posting of notices for Sheriff's sale and conducting the

(Testimony of John Claussen, Jr.)

Sheriff's sale, and mileage, that was another expense that occurred on September 21, 1943, and that amounted to \$61.05.

Q. The items you have just given?

A. Yes, sir.

Q. The \$81.00 that you spoke of, do you know in what fashion that was received in the Sheriff's office?

A. I was paid by check April 21, 1943, by Mr. King. [51]

Q. Mr. King's personal check, of his office check?

A. I wouldn't be able to state.

Q. It was by check?

A. Yes, sir.

Q. Can you tell us why you are holding up the \$269.15 from the 21st of September, 1943, and you still hold it?

A. Only under Mr. King's instructions; I asked him if he wanted me to make a return.

Q. Were they written instructions?

A. No, sir, just verbal.

Q. Can you tell us why the original execution is still in the file and has not yet been returned to the Clerk's office of Napa County?

A. Because Mr. King told me to hold it.

Mr. Margolis: We will offer in evidence, may it please your Honor, the original execution in action, Peter Cassenos versus George Buzas, being No. 8374 out of the Superior Court of the State of California, County of Napa, dated September 8, 1942; another original execution of sale, dated April 22, 1943. The instructions of September 8, 1942,

(Testimony of John Claussen, Jr.)

which accompanied the earlier writ, and the instructions dated the 13th day of September, 1943,— I will withdraw that for a moment.

Q. Were there any instructions which you received on that date with the writ of April, 1943?

A. Mr. King told me to follow the instructions contained on the first one.

Q. Told you over the phone, or in person?

A. In person, he presented it to me in person.

Mr. Margolis: I will renew my offer of the exhibits already mentioned, and also the one dated the 13th day of September, 1943, that is the notice of sale, it has the instructions on the top with the instructions written in ink directed to Napa County Sheriff and reading: [52]

“Please sell according to the following notice. Signed Percy King, Jr., Attorney for Plaintiff.”

We will offer these four exhibits in evidence and respectfully ask that they be received.

Mr. King: Might I interpose an objection at this time on the ground that the proposed exhibits are irrelevant and immaterial, and that they deal with a matter that this Court has no jurisdiction over, a matter that has been settled in the Superior Court of the State of California.

The Court: Overruled. They may be admitted.

(The documents referred to were received in evidence and marked Bankrupt's Exhibits Nos. 2, 3, 4, and 5, respectively.)

(Exhibits Nos. 2, 3, 4, and 5 printed out in full at pages 32 to 36.)

(Testimony of John Claussen, Jr.)

Mr. Margolis: Q. Now, have you any further additional documents in your file, pertaining to the inquiry here, Mr. Claussen?

A. Yes, sir, I have a receipt from Mr. King. (Document handed to counsel.)

Q. You received the \$600.00 evidenced by this receipt of September 21, 1943?

A. Yes, sir.

Q. It was paid to Mr. King?

A. Yes, sir.

Q. It was purchased by Mr. Cassenos?

A. Yes, sir.

Q. He paid \$600.00 for it in cash?

A. Yes, sir.

Q. You turned the \$600.00 over to Mr. King?

A. Yes, sir.

Q. Is there anything else in your file pertaining to the matter?

A. I have a receipt here from the Napa Milling Company for \$330.20, which we received for sale of wheat.

Q. Is there anything else in your file respecting this matter?

A. You mean in regarding to this sale?

Q. This sale, yes. Do you have any letters from Mr. Cassenos the judgment creditor here? [53]

A. No, sir, I never had any dealings with Mr. Cassenos.

Q. I see. Do you have anything else from Mr. King?

A. No, sir, I don't. I have here the order—certified copy of the order vacating judgment.

Q. Do you have a recapitulation of the money

(Testimony of John Claussen, Jr.)

you received, the money you disbursed and to whom paid on that matter? -

A. Yes, sir, I do. (Document presented to counsel.)

Mr. Margolis: We now respectfully present to your Honor these documents to be marked as exhibits.

Q. This, you say, is a receipt from the Napa Milling Company?

A. Yes, sir, that is what they gave me.

Mr. Margolis: A document showing that wheat, 12,700 pounds at \$2.60, a total sum of \$330.20, sold to the Napa Milling and Warehouse Company. We ask that be marked next in order.

Mr. King: Might I, for the purpose of the record, your Honor, make the same objection as I made to the introduction of the first documents, and might my objection be deemed to go to all of these documents?

The Court: It may be admitted.

(The document referred to was received in evidence and marked Bankrupt's Exhibit No. 6.)

(Exhibit No. 6 printed out in full at page 38.)

Mr. Margolis: The receipt dated October 1, 1942, for \$150.00, accompanied by a copy, a copy of Sheriff's sale on execution.

The Court: It may be admitted.

(The document referred to was received in

(Testimony of John Claussen, Jr.)

evidence and marked Bankrupt's Exhibit No. 7.)

(Exhibit No. 7 printed out in full on page 38.)

Mr. Margolis: A receipt dated September 21, 1943, for \$600.00, accompanying a copy of Sheriff's sale on execution.

The Court: It may be admitted. [54]

(The document referred to was received in evidence and marked Bankrupt's Exhibit No. 8.)

(Exhibit No. 8 printed out in full at page 40.)

Mr. Margolis: And a recapitulation of money received by the Sheriff's office and the disbursement of it.

The Court: Admitted.

(The document referred to was received in evidence and marked Bankrupt's Exhibit No. 9.)

(Exhibit No. 9 printed out in full at page 42.)

Mr. Margolis: Q. How long have you been connected with the Sheriff's office in your present capacity, Mr. Claussen?

A. A little over four years.

Q. And prior to that were you in any other capacity in the Sheriff's office?

A. No, sir, I was with the Napa Police Department.

(Testimony of John Claussen, Jr.)

Q. And in your capacity as under Sheriff of Napa County, how long do you hold a writ in your office before you execute it?

Mr. King: Now, I will object to that, your Honor, on the ground that it is incompetent, irrelevant and immaterial, and not in the issue of this case; it might do in other cases.

The Court: Objection sustained.

Mr. Margolis: Q. Do you know, in your duties as under sheriff of Napa County, how long you are able to hold a writ in your office before you return it to the Clerk's office?

Mr. King: Same objection, your Honor, irrelevant, immaterial.

The Court: Sustained.

Mr. Margolis: I think it is appropriate. I have in mind this: that as I understand the law, when an execution is issued it must be returned to the Sheriff within sixty days, and I am trying to ascertain that, and that is the reason I asked the witness if he had any other correspondence or papers in connection with this matter. We have a writ here almost nine months old, reposing in the files of the Sheriff's office.

The Court: The Court withdraws its ruling. You may answer.

Mr. Margolis: May I reframe the question, your Honor?

The Court: Yes.

Mr. Margolis: Q. Usually, when a writ of ex-

(Testimony of John Claussen, Jr.)

ecution is delivered to the Sheriff's office, how long are you required to retain it before you return it to the Clerk's office, whether satisfied or unsatisfied?

Mr. King: Object, your Honor; incompetent, irrelevant and immaterial, and not within the issues of this case; and secondly a legal conclusion of the witness.

The Court: Overruled.

A. Most executions state the time that they are to be returned. We receive some in our office that are to be returned in ten days, some thirty days, some sixty days.

Mr. Margolis: Q. And you are quite familiar that the longest that a writ can repose in your office is sixty days, after which you must return it to the Clerk's office; isn't that correct?

A. I believe you are correct.

Mr. Margolis: That is all.

Cross Examination

Mr. King: Q. As a matter of fact, you are holding this \$265.00, or \$269.00 in your office in the form of a warrant under a court order?

Mr. Margolis: We object to that as being incompetent, irrelevant and immaterial in what form it is being held. The fact of the matter is, it is in the Sheriff's hands at this time.

The Court: Objection sustained.

Mr. King: Q. Isn't it true that that fund that you hold [56] there was available to me at any time that I would call for it?

(Testimony of John Claussen, Jr.)

Mr. Margolis: I object to the question for reasons heretofore stated, your Honor.

The Court: Same ruling.

Mr. King: That is all. No further questions.

Mr. Margolis: That is our case, your Honor.

Mr. King: We rest, your Honor.

The Court: You may submit the matter on briefs and transcript of the testimony.

[Endorsed]: Filed Dec. 8, 1944. [57]

[Title of District Court and Cause.]

To Brantley W. Dobbins, 520 Marin St., Vallejo, Calif.

King & King, Behlow Bldg., Napa, Calif.

NOTICE

You Are Hereby Notified that on Thursday, October, 19th, 1944 Judge Martin I. Welsh Ordered that the petition to restrain the enforcement and collection of the judgment be and the same is hereby Denied, that the temporary restraining order be and the same is hereby Dissolved, and that the petitioner's application for an order to turn over certain money be and the same is hereby Denied. In Accordance with Opinion filed herein.

Sacramento, California, October 20, 1944.

C. W. CALBREATH

Clerk, U. S. District Court

[58]

In the United States District Court for the Northern District of California, Northern Division.

No. 9490

In the Matter of

GEORGE J. BUZAS,

Bankrupt.

OPINION

Petitioner, George J. Buzas, brings this proceeding to restrain the collection of a judgment for \$900 and costs recovered against him in the Superior Court of the State of California, in and for the County of Napa, by the respondent, Peter Cassenos and for a turnover order with respect to moneys already collected by execution of said judgment. Respondent's state court action was pending against petitioner when he filed his petition in bankruptcy herein. Judgment by default was recovered in that action by the respondent after petitioner received his final discharge in bankruptcy.

Petitioner contends that the claim of the respondent, duly listed in the schedule of debts of the petitioner accompanying his bankruptcy petition, was discharged by the decree of final discharge of this court. [59]

The respondent disputes the jurisdiction of this court, in this bankruptcy proceeding, to hear petitioner's application for relief from the enforcement of the judgment of the state court. If jurisdiction be present in this court to entertain the application, then—asserts the respondent—the petitioner must

be denied the relief he seeks because his liability to respondent upon which the state court judgment is based is one for willful and malicious injury to property and, consequently, is not discharged in bankruptcy.

Bankruptcy Act, Section 17(2)

I am satisfied with the jurisdiction of this court in bankruptcy to determine in this proceeding the effect of the decree of final discharge entered herein upon the liability of the bankrupt to respondent, existing when this proceeding was instituted, and which was listed among the unsecured debts of the bankrupt in his schedule of liabilities filed herein; and to grant or deny the relief sought against the enforcement of that liability, according to the conclusion here reached as to the effect on such liability of petitioner's final discharge in bankruptcy.

Local Loan Co. v. Hunt, 292 U. S. 234;
Holmes v. Rowe 97 Fed. 2d, 537.

At the time of the filing of the petition in bankruptcy herein, respondent's suit was pending in the state court. The complaint in that action (Bankrupt's Exhibit No. 1) alleged that the petitioner—

“ * * * forcibly and unlawfully entered in and upon said (respondent's) cultivated real property and drove a truck over the growing vines and crop of tomatoes injuring and damaging the same in the sum of \$300.00.”

The prayer of the complaint asked for treble damages and costs.

By the default judgment entered subsequent to

[60] the final discharge of petitioner, the state court found that all of the allegations of the complaint were true; that the forcible entry of petitioner upon the property of respondent was willful and malicious, and awarded judgment to respondent in treble the amount of actual damage sustained.

The petitioner complains that at no time prior to the entry of judgment against him in the state court was respondent's claim based on any asserted willful or malicious injury to property; that at all times up to the entry of that default judgment, which occurred after petitioner was granted his final discharge, respondent's claim against him was one for simple trespass upon and injury to property, unaccompanied by any willfulness or malice. With this contention, I cannot agree. The forcible entry upon the property of another and the driving of a truck over the latter's growing vines and tomatoes—and these were the charges of respondent in his complaint filed against the petitioner—imputes to the doer of the acts a course of conduct pursued not as the result of mere inadvertence or carelessness. The doing of these acts imports a state of mind accompanying them which is both willful and malicious. In *San Francisco etc. Soc. v. Leonard*, 17 Cal. App. 254, which was an action for damages for forcible entry and detainer of real property, the court stated at page 269:

“It was not necessary, in our opinion, for the plaintiff to plead more than the alleged forcible detainer to entitle it to prove facts which would

have justified the court in awarding exemplary or punitive damages. The charge of forcible detainer of real property necessarily carries with it the implication that such detainer is from a bad motive, and what the precise nature of that motive is—whether it be founded in malice or fraud or oppression of any sort—may properly be shown under the general averment that the detainer is forcible.” [61]

Moreover, from the fact that treble damages were requested by respondent in his complaint filed against petitioner in the state court, it is evident that ever since suit was instituted by respondent on his claim—and it must be remembered that this suit was pending when petitioner filed his application in bankruptcy—that claim was **predicated upon a willful and malicious wrong.** For to the extent that damages are sought for a forcible entry upon property, in the California state court, in excess of the actual pecuniary loss thereby sustained, they are not based upon any claimed right to compensatory relief. Their objectives are punitive and exemplary and they are allowed only in cases of wrongful acts done deliberately and unconscionably. In speaking of the power of the state court to award treble damages in cases of forcible or unlawful entry or detainer upon real property, the court in the case of *San Francisco etc. Soc. v. Leonard, supra*, stated at page 271:

“That the power thus specially given the court was intended to be exercised in those cases

only where the evidence discloses that the defendant has committed the tortious act charged against him wantonly or by oppression or with malice, express or implied, is a proposition which, in our opinion is rendered free from any kind of doubt, if not alone by the language of Section 1174 of the Code of Civil Procedure, then most surely by that of Section 735 of the same code."

It is my conclusion that the allegation of respondent's complaint that petitioner forcibly entered upon his property and damaged his growing crops, and his request for the imposition of treble damages for such acts, is the equivalent of a charge of willful and malicious injury to respondent's property, a liability not subject to discharge in bankruptcy. The record of the proceedings in the state court do not support petitioner's contention that a dischargeable [62] claim was converted by the judgment entered subsequent to petitioner's discharge in bankruptcy into an undischageable debt for the purpose of avoiding the effect of the discharge. The judgment awarding respondent treble damages for a willful and malicious injury to property was fully supported by the allegations of the complaint upon which it was based; and it has not been rendered ineffective because of the decree of final discharge granted to petitioner.

It Is Therefore Ordered, that the petition of George J. Buzas to restrain the enforcement and collection by execution of the judgment of the

Superior Court of the State of California in and for the County of Napa in the action entitled Peter Cassenos, Plaintiff, v. George Buzas, Defendant, and numbered 8374, be and the same is Denied; that the temporary restraining order heretofore issued by this court against the enforcement of such judgment be and the same is Dissolved; and that petitioner's application for an order directing respondent to turn over to petitioner the amount heretofore collected by him on said judgment is Denied.

Dated: October 18, 1944.

MARTIN I. WELSH

United States District Judge.

[Endorsed]: Filed Oct. 19, 1944. [63]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT
OF APPEALS UNDER RULE 73 (b)

Notice is hereby given that George J. Buzas, the above named Bankrupt, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that certain Order and Judgment made and entered in the above entitled proceedings by the Honorable Martin I. Welsh, Judge of the above entitled Court, on the 20th day of October, 1944, denying Bankrupt's petition to restrain the enforcement and collection of a certain judgment and [64] dissolving the temporary restraining

order, and denying Bankrupt's application for a turnover order.

Dated: November 28th, 1944.

GEORGE BUZAS

By MAX H. MARGOLIS

HERBERT CHAMBERLIN

BRANTLEY W. DIBBONS

His Attorneys

[Endorsed]: Filed Nov. 29, 1944. [65]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men by These Presents, that Max H. Margolis, one of the attorneys for George J. Buzas, as Depositor for the purpose of making, guaranteeing or becoming surety upon bonds or undertaking required or authorized by the laws of the United States of America, is held and firmly bound unto Peter Cassenos and to Joseph P. Moore, Sheriff of Napa, State of California, in said District, and unto his successors in such offices in the penal sum of \$250.00 which said sum is represented by the attached Cashier's check in the sum of \$250.00 dated November 28, 1944 [66] being No. 952590 drawn by the Anglo California National Bank of San Francisco in favor of C. W. Calbreath, Clerk, United States District Court, well and truly to be made unto the said appellees or their said successors and personally represents respectfully.

The condition of the foregoing obligation and undertaking is such, that whereas the above named Bankrupt, George J. Buzas, has appealed and is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Order and Judgment made and entered in the above entitled Court and Cause, on the 20th day of October, 1944, denying Bankrupt's petition to restrain the enforcement and collection of a certain judgment and dissolving the temporary restraining order, and denying Bankrupt's application for a turnover order;

Now, Therefore, if the said George J. Buzas, Bankrupt, shall prosecute his said appeal to effect and answer all costs which may be awarded or adjudged against him, if he fails to make good his said appeal, then this obligation shall be void; otherwise to remain in full force and effect, and in case of any breach of said condition, it is expressly agreed that the said District Court may, upon notice to said George J. Buzas, of not less than ten (10) days proceed summarily in the above entitled suit to ascertain the amount which he is bound to pay on account of such breach and render judgment against him therefor and award execution on the proceeds of said cashier's check.

In Witness Whereof, these presents have been executed by Max H. Margolis, as Depositor for said George J. Buzas.

November 28th, 1944.

MAX H. MARGOLIS

Depositor. [67]

State of California,
City and County of San Francisco—ss.

On the 28th day of November, 1944, before me, Louis Wiener, a Notary Public, in and for the City and County of San Francisco, residing therein, duly commissioned and sworn, personally appeared Max H. Margolis, as Depositor, for George J. Buzas known to me to be the person who executed the within instrument, and acknowledged to me that he executed the within instrument, and acknowledged to me that he executed the same, and also known to me to be the person whose name is subscribed to the within instrument and he acknowledged to me that he subscribed his name as Depositor for the said George J. Buzas.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the date and year first above written.

LOUIS WIENER

Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Nov. 29, 1944. [68]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL UNDER RULE 75 (a)

To the Above Entitled Court and to C. W. Calbreath, Esq., Clerk of Said Court, and to Peter Cassenos and Joseph P. Moore, Sheriff of the County of Napa, State of California, Respondents, and to Messrs. King and King, Their Attorneys:

Comes now George J. Buzas, the Appellant herein, and, in accordance with Rule 75(a) of the Federal Rules of Civil Procedure designates the following as the portions of the record, proceedings and evidence to be contained in the Record on Appeal, notice of which said Appeal was heretofore filed herein on November 29th, [69] 1944, viz:

1. Debtor's Petition.
2. Order of Adjudication.
3. Statement of Affairs.
4. Schedules of Bankrupt.
5. Discharge of Bankrupt dated November 18, 1941.
6. Petition for Order to Show Cause why Legal Proceedings should not be Stayed, for Temporary Restraining Order to be Made Permanent after Hearing, and for Turnover Order.
7. Order to Show Cause and Temporary Restraining Order.
8. Petitioner's Exhibit No. 1, the Complaint filed in the Superior Court of the State of California, in and for the County of Napa, entitled Peter Cas-

senos, Plaintiff, v. George Buzas, Defendant, being No. 8374.

9. Petitioner's Exhibit No. 2, Writ of Execution in said action dated September 8, 1942.

10. Petitioner's Exhibit No. 3, Instructions accompanying said Writ of Execution dated September 8, 1942.

11. Petitioner's Exhibit No. 4, Writ of Execution in said action dated April 22, 1943, together with notation thereon "fully satisfied—not yet filed" dated September 25, 1943.

12. Petitioner's Exhibit No. 5, Notice of Sheriff's Sale of Property on Execution, dated September 13, 1943 and accompanying Instructions.

13. Petitioner's Exhibit No. 6, Sale to Napa Milling and Warehouse Company, "Wheat for \$330.20".

14. Petitioner's Exhibit No. 7, Receipt dated October 1, 1942, for \$150.00 signed by Percy King for Peter Cassenos and accompanying Sheriff's Certificate of Sale on Execution.

15. Petitioner's Exhibit No. 8, Receipt dated September 21, 1943, in the sum of \$600.00 showing receipt by Percy King for Peter Cassenos. [70]

16. Petitioner's Exhibit No. 9, Recapitulation of Receipts and Disbursements of Sheriff in the sum of \$1080.20.

17. Respondent's Exhibit "A", the Judgment in said action, No. 8374, dated the 22nd day of April, 1943.

18. Transcript of Testimony on the hearing of the Order to Show Cause held on April 6, 1944.

19. Notice of C. W. Calbreath, Clerk, United States District Court, dated October 20, 1944.

20. Opinion of Honorable Martin I. Welsh, United States District Judge, dated October 18, 1944, and filed October 19, 1944.

21. (Appellant) Notice of Appeal dated November 28, 1944.

22. (Appellant) Cost Bond on Appeal.

23. This Designation of Contents of Record on Appeal.

Dated: December 7th, 1944.

Respectfully submitted,

MAX H. MARGOLIS

HERBERT CHAMBERLIN

BRANTLEY W. DOBBINS

By MAX H. MARGOLIS

Attorneys for Appellant

George J. Buzas

[Endorsed]: Filed Dec. 8, 1944. [71]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 71 pages, numbered from 1 to 71, inclusive, contain a full, true and correct transcript of certain records and proceedings in the Matter of George J. Buzas, Bankrupt No. 9490, as the same now remain on file and

of record in this office; said transcript having been prepared pursuant to and in accordance with the Designation of Contents of Record on Appeal, copy of which is embodied herein.

I further certify that the cost of preparing and certifying the foregoing Record on Appeal is the sum of Fifteen and 45/100 (15.45) Dollars, and that the same has been paid to me by the attorneys for the appellant herein.

In witness whereof, I have hereunto set my hand and the official seal of said District Court, this 26th day of February, A.D. 1945.

[Seal] C. W. CALBREATH,

Clerk

By F. M. LAMPERT

Deputy Clerk [72]

[Endorsed]: No. 10991. United States Circuit Court of Appeals for the Ninth Circuit. George J. Buzas, Appellant, vs. Peter Cassenos and Joseph P. Moore, Sheriff of the County of Napa, State of California, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed February 28, 1945.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10991

GEORGE J. BUZAS,

Appellant,

vs.

PETER CASSENOS and JOSEPH P. MOORE,
as SHERIFF OF NAPA COUNTY, STATE
OF CALIFORNIA,

Appellees.

DESIGNATION OF PARTS OF RECORD NE-
CESSARY FOR THE CONSIDERATION
OF APPEAL UNDER RULE 19 (6)

Comes now the above-named Appellant and hereby designates, as the parts of the record which he deems necessary for the consideration of the above appeal of all the record as contained in the designation of the contents of the Record on Appeal heretofore transmitted to the Clerk of the above-entitled Court by the Clerk of the United States District Court for the Northern District of California.

Dated: February 28, 1945.

MAX H. MARGOLIS

HERBERT CHAMBERLIN

BRANTLEY W. DOBBINS

By MAX H. MARGOLIS

Attorneys for Appellant

George J. Buzas.

[Endorsed]: Filed February 28, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CONCISE STATEMENT OF POINTS TO BE
RELIED UPON BY APPELLANT ON AP-
PEAL UNDER RULE 19 (6)

Comes now George J. Buzas, Appellant herein, and in accordance with Rule 19 (6) of the above entitled Court, specifies the following as a concise statement of the points on which Appellant intends to rely on the Appeal heretofore perfected from the Order made and entered by Hon. Martin I. Welsh, Judge of the United States District Court for the Northern District of California, on the 18th day of October, 1944, and more particularly specified and described in the Notice heretofore filed with the Clerk of said District Court on November 29, 1944, as follows:

That that certain Order of the District Judge entered on the 18th day of October, 1944, by which he denied the petition of Appellant for an Order enjoining and restraining Appellee, Peter Cassenos, his agent, servants, assigns, employees and attorneys from proceeding with any legal process to collect a judgment, taken by default after Appellant's discharge, and from taking any legal proceedings, legal or otherwise in connection with said judgment, and by which said District Judge dissolved a temporary restraining order, theretofore issued, against the enforcement of said judgment, and by which said District Judge denied Appellant's application for an order directing Appellees, Peter Cassenos and Joseph P. Moore, Sheriff of Napa County, State of

California, to turn over to Appellant the respective amounts collected by them on said judgment, was and is erroneous and contrary to law, in that,

1. That said Order herein appealed from is not supported by and is contrary to the evidence adduced by Appellant and by Appellees upon the hearing of Appellant's petition to stay legal proceedings, for a temporary restraining order to be made permanent and for a turnover order.

2. That said Order herein appealed from is not supported by and is contrary to the evidence in that it affirmatively appears that long after Appellant's discharge, Appellee, Peter Cassenos, procured a default judgment against Appellant on a claim for damages, which said claim was discharged upon the granting of Appellant's discharge.

3. That it affirmatively appears from the evidence adduced upon said hearing of Appellant's said petition that at no time up to and including his discharge was he apprised of or had any notice of any charge of willful or malicious acts, the basis of the claim of Appellee, Peter Cassenos, being one for damages only.

4. That the evidence adduced upon said hearing of Appellant's said petition and contrary to the finding by said District Judge of imputed willful or malicious conduct on the part of Appellant, affirmatively demonstrates that Appellee, Peter Cassenos, did not sustain the burden of proving the claim was not dischargeable.

5. That the evidence adduced upon said hearing

of Appellant's said petition affirmatively shows the sum of \$269.15 was in the hands of Appellee, Joseph P. Moore, Sheriff of Napa County, State of California, on the date of said hearing, which sum was recovered by said Appellee pursuant to a writ of execution issued out of the Superior Court of Napa County, State of California, on said judgment, and that the Order of said District Judge herein appealed from makes no disposition of said sum of \$269.15.

6. That the evidence adduced upon said hearing of Appellant's said petition affirmatively shows that two original writs of execution were issued, neither of which at the time of the hearing of Appellant's said petition, were returned and that the second was not levied until more than five months after its issuance.

7. That it does not appear from the evidence that the claim of said Appellee, Peter Cassenos, is not dischargeable.

8. That the evidence adduced upon said hearing of Appellant's said petition, and from the allegations contained therein, no answer thereto having been filed, affirmatively demonstrates that the claim in controversy arose out of a lease by Appellant to Appellee, Peter Cassenos, of a parcel of land for a term of approximately one year, the rent for which was the total sum of \$70.00, the embarrassment, harassment and unwarranted annoyance by the levy of two writs of execution and the unsatisfied condition of the judgment on said claim, all add up to such

“unusual circumstances” which warrant the relief sought by Appellant in his petition.

Dated: March 6th, 1945.

MAX H. MARGOLIS
HERBERT CHAMBERLIN
BRANTLEY W. DOBBINS

By MAX H. MARGOLIS

Attorneys for Appellant
George J. Buzas

[Endorsed]: Filed March 6, 1945. Paul P.
O'Brien, Clerk.